

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ARTHUR MERCER,

Plaintiff,

v.

1:11-CV-232  
(GTS/DRH)

ANDREW CUOMO, Governor of New York;  
ERIC T. SCHNEIDERMAN, Attorney General of  
New York, THOMAS A. KLONICK, and the members  
of the commission on judicial conduct, and the  
State of New York,

Defendants.

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APPEARANCES:

ARTHUR MERCER  
Plaintiff pro se  
001646  
Ulster County Jail  
380 Boulevard  
Kingston, New York 12401

DAVID R. HOMER  
U.S. Magistrate Judge

**REPORT-RECOMMENDATION and ORDER**

In compliance with this Court's order (Dkt. No. 4), pro se plaintiff Arthur Mercer ("Mercer" or "plaintiff") filed an amended complaint. Dkt. No. 8. Mercer brings this action pursuant to 42 U.S.C. § 1983. A review of the amended complaint reveals that Mercer has failed to bring forth any new or additional facts or claims demonstrating that the defendants were personally involved in the alleged violation of Mercer's constitutional rights. Mercer's amended complaint contains three numbered paragraphs alleging that each defendant failed to perform his duties which resulted in a violation of plaintiff's constitutional rights. Dkt. 8 at 2.

Mercer was instructed that any amended complaint must show evidence that (1) the defendant participated directly in the alleged constitutional violation; (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong; (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom; (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts; or (5) the defendant exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring. *Leeke v. Timmerman*, 454 U.S. 83 (1981). Moreover, Mercer's amended complaint fails to demonstrate that he has standing to complain that the named defendants deprived him of any civil right since Mercer had no direct contact with any of the defendants. *Id.*

In sum, Mercer's amended complaint fails to comply with the pleading requirements of the Federal Rules of Civil Procedure. Accordingly, it is hereby


**RECOMMENDED** that Mercer's amended complaint be dismissed in its entirety without prejudice pursuant to Fed. R. Civ. P. 16(f)(1)(C) and 37(b)(2)(A)(v) for failure to comply with the Court's March 9, 2011 order; and it is hereby

**ORDERED** that the Clerk serve Mercer with a copy of this report-recommendation by regular mail and certified mail, return receipt requested.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court "within fourteen (14) days after being served with a copy of the . . . recommendation." N.Y.N.D.L.R. 72.1(c) (citing 28 U.S.C. §636(b)(1)(B)-(C)). **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d

85, 89 (2d Cir. 1993); Small v. Sec'y of HHS, 892 F.2d 15 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: April 18, 2011  
Albany, New York

  
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United States Magistrate Judge